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August 2, 2012

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, XO Communications Services, LLC  
WC Docket No. 06-122  
Universal Service Contribution Methodology  
USAC Request for Guidance  
XO Request for Review of Decision of Universal Service Administrator

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice that on July 31, 2012, XO Communications Services, LLC's ("XO's") representatives met with Nicholas Degani, Legal Advisor, Wireline for Commissioner Ajit Pai, in the proceeding identified above. In attendance on behalf of XO were Steven A. Augustino of Kelley Drye & Warren LLP; and Lisa R. Youngers of XO Communications Services, LLC

XO asked that the Commission grant the reseller portions of its December 29, 2010 appeal of a Universal Service Fund Contributor Audit conducted by USAC. XO also asked the Commission to clarify wholesale carrier obligations in response to USAC's March 1, 2011 Guidance Request and to direct USAC to consider "other reliable proof" submitted by wholesale carriers during an audit to establish its reasonable expectation the customer is a reseller. XO noted that the Wireline Competition Bureau has previously confirmed that the Form 499-A Instructions are guidance and that contributors may rely upon other reliable proof that differs from the information identified in the Instructions. XO supports clarification that re-affirms these findings.

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XO also supports clarification that USAC may not assess USF on wholesale revenues – whether or not the wholesale carrier can demonstrate a “reasonable expectation” – in circumstances where USAC’s records demonstrate that the reseller was a contributor to the Fund during the relevant year. XO stressed that this objective information is the only information reasonably available to USAC or the wholesale carrier during an audit, and that such information is sufficient evidence of potential double assessment of USF on wholesale revenues. In response to the guidance request, XO stated that a confirmatory certification, executed by the reseller after the time period when services were rendered, would also provide reliable proof of the risk of double assessment.

Finally, XO stated that it receives certifications from its resellers using language suggested in the Form 499-A Instructions. XO stated that it has always interpreted the Instructions to permit wholesale carriers to qualify resellers on an entity basis and that it interprets the *Universal Service First Report and Order*<sup>1</sup> and the *NECA Order*<sup>2</sup> to authorize qualification of resellers on an entity basis. XO does not have the systems in place to track or assess USF based on the specific services ordered by the reseller. XO could not develop those systems without significant difficulty and expense, if it could do so at all.

In a subsequent telephone conversation with Mr. Degani, I identified the portions of the *Universal Service First Report and Order* and *NECA Order* that permit qualification of resellers on an entity basis. I stated that the *Universal Service First Report and Order* does not define a reseller, and suggests only that the resellers would be assessed USF if they consumed the services for their own internal purposes.<sup>3</sup> I also stated that the Form 457 appended to the *NECA Order* was adopted with only a one paragraph description that does not mention the reseller issue at all.<sup>4</sup> Nevertheless, the description of a reseller in those Instructions refers to a provider that incorporates services into its own “offerings” and pays USF based on revenues from those “offerings.”<sup>5</sup> This statement appears to refer to the provider’s entire product mix (its “offerings”), and is consistent with qualifying resellers on an entity-wide basis. Moreover, the next paragraph of the instructions refers specifically to reporting revenues *from entities* that

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997).

<sup>2</sup> *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997).

<sup>3</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9207 (¶ 844).

<sup>4</sup> *NECA Order*, 12 FCC Rcd at 18442 (¶ 80).

<sup>5</sup> *Id.* at 18507 (Appendix C, block 4 discussion).

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reasonably would be expected to contribute to support universal service, not from services that would be reported as assessable.<sup>6</sup>

Sincerely,

A handwritten signature in dark ink, appearing to read "Steven A. Augustino". The signature is fluid and cursive, with the first name "Steven" and last name "Augustino" clearly legible.

Steven A. Augustino

SAA:pab

cc: Nicholas Degani

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<sup>6</sup> *Id.* at 18508 (“An underlying contributor should have documented procedures to ensure that it reports as revenues from resellers only revenues from entities that reasonably would be expected to contribute to support universal service”).